

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

Petition of SBC Communications
Inc. For Forbearance Under 47
U.S.C. § 160(c) From the
Application of the Five-Year
Recovery Period for Local Number
Portability Costs Under 47
C.F.R. § 52.33(a)(1)

Petition of AT&T Inc. for Waiver
to Treat Certain Local Number
Portability Costs Under 47 C.F.R.
§ 52.33(a)(1)

CC Docket No. 95-116

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES
COMMISSION AND THE PEOPLE OF THE STATE
OF CALIFORNIA IN RESPONSE TO
AT&T PETITION FOR WAIVER**

The California Public Utilities Commission (California or the
CPUC) and the People of the State of California submit this

response to the Petition of AT&T Inc. for Waiver to Treat Certain
Local Number Portability Costs as Exogenous Costs under Section
61.45(D) filed on March 31, 2006 with the Federal Communications

Commission (FCC or Commission). In its petition, AT&T asks the FCC to allow AT&T to waive § 61.45(d) of the FCC's rules so that AT&T can treat as exogenous costs certain carrier-specific local number portability (LNP) implementation costs which AT&T alleges it has not recovered through the FCC mandated surcharge. AT&T seeks to recover these "costs" from end users via the end user common line charge (EUCL). For reasons set forth below, the CPUC cannot support AT&T's request, and urges the FCC to examine closely AT&T's alleged cost figures before determining that AT&T should be allowed to recover any additional monies for implementing LNP.

I. AT&T HAS MADE THE IDENTICAL REQUEST PREVIOUSLY AND THE REQUEST IS PENDING BEFORE THE FCC

AT&T omits a crucial fact from its petition. AT&T fails to mention that, on February 8, 2005, its predecessor, SBC, filed two petitions with the FCC addressing issues identical to those raised in the instant petition. In the February 2005 Petition for Forbearance, SBC asked the FCC to forbear from enforcing "its rule limiting SBC's ability to recover its costs from implementing [LNP] to a five-year period". In the companion Petition for Waiver, SBC requested that the FCC, in the alternative, grant SBC a waiver of the Commission's rule limiting SBC to a five-year period for LNP costs.

A number of parties, including several state commissions, filed comments in response to the February 2005 SBC petitions. To date, the FCC has not issued a decision addressing those petitions. While that request for relief is still pending, AT&T has filed the instant petition seeking to recover, via yet another avenue, its alleged costs. It is worth noting that the FCC allowed an extremely short comment period on the instant petition – just five working days for comments, and an additional two working days for reply comments. Through informal discussion, the CPUC is aware that the staff at many, if not most, state commissions cannot obtain approval to file comments on such short notice. Thus, by truncating the comment period, the FCC has virtually ensured that very few parties – and even fewer state commissions - will have the opportunity to comment on the instant petition.

II. ABSENCE OF SUPPORTING DATA

In responding to the February 2005 SBC petitions, the CPUC noted that SBC had provided inadequate data to support its claim. The CPUC staff reviewed the information contained in the February 2005 SBC petitions, and was particularly interested in a dollar amount

identified in the declaration appended to that filing.¹ In that declaration, SBC stated that it was seeking “\$41 million for Pacific Bell”. Pacific Bell was the name of the SBC subsidiary in California prior to SBC’s acquisition of Pacific Telesis, and is fully subject to CPUC regulatory jurisdiction as the largest ILEC in California.

As set forth in the CPUC’s response to the two February 2005 SBC petitions, CPUC staff sought data to support the \$41 million figure SBC proffered as the amount of its unrecovered LNP costs in California. Despite submitting two data requests to SBC, CPUC staff received no detailed information that would support the SBC claim. As a consequence, the CPUC was unable to support the SBC petitions in 2005.

Similarly, here, AT&T has provided no detailed data to support its claim of unrecovered LNP costs. As we said in response to the February 2005 SBC petitions, the CPUC here urges the FCC to obtain from AT&T detailed data underlying its gross claimed figure of \$211 million. California notes that AT&T has filed the instant petition on “behalf of . . . Pacific Bell”, the former name of its subsidiary providing local exchange service in California and portions of Nevada.² Yet,

¹ *See Declaration of John G. Connelly*, appended to each of the two February 2005 SBC petitions.

² Petition, p. 1. fn. 1.

AT&T “does not seek to recover costs associated with the territories served by . . . Nevada Bell Telephone Company”.³ This means that any amount AT&T seeks on behalf of Pacific Bell will be paid by ratepayers in AT&T’s California territory.

The CPUC further notes that in the instant petition, in contrast to the SBC petitions filed in 2005, AT&T does not even provide a breakdown of alleged unrecovered costs by company or by region. Thus, while SBC claimed last year to have not recovered \$41 million in LNP costs in California, this year’s AT&T petition offers no information about California at all. The absence of specific cost information in last year’s petition raised a concern for the CPUC.

The AT&T petition highlights that same concern, especially given that AT&T has not even provided an estimate of the amount it seeks to recover from California ratepayers via an increased to the EUCL. In addition, the very short time allowed for parties to comment on the instant petition precluded CPUC staff from obtaining any data regarding AT&T’s allegation of unrecovered costs. Given the CPUC staff experience in attempting to obtain data in 2005 to support the SBC petitions, and the company’s failure to provide adequate data, the

³ *Id.*, p. 6, fn. 12.

CPUC is not confident it would have had a more positive experience this time around.

To further emphasize the CPUC's concerns about the absence of data to support the unstated amount AT&T seeks to recover in California, we have appended to these comments the two rounds of comment the CPUC filed in response to the February 2005 SBC petitions.⁴

III. CONCLUSION

The CPUC cannot support AT&T's petition for waiver. Further, the CPUC strongly urges the FCC to request from AT&T data underlying AT&T's contention that it has failed to recover all LNP costs because of a decline in its number of access lines. The CPUC is not asserting that AT&T's claims are in error or false. Rather, the CPUC cannot assess the claims because of a lack of data. The CPUC urges the FCC to obtain from AT&T data to support its claim of unrecovered LNP costs. Since AT&T included no information that states might

⁴ The CPUC's March 24, 2005 response to the SBC petitions refers to a data request from CPUC staff to SBC. We are unable to attach a copy of that data request to this filing because of a failure in our documents management system. We invite the FCC to refer to our March 24, 2005 filing in this docket, to which the data response was appended.

review, and the truncated comment period allowed no opportunity for state review

of the cost claims, the FCC must undertake the task of verifying the claimed cost amounts.

Respectfully submitted,

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